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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,586	05/02/2001	Victor V. Gogolak	597932000200	6777

25227 7590 09/28/2010  
MORRISON & FOERSTER LLP  
1650 TYSONS BOULEVARD  
SUITE 400  
MCLEAN, VA 22102

EXAMINER
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BUSS, BENJAMIN J

ART UNIT	PAPER NUMBER
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09/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09681586	5/2/2001	GOGOLAK, VICTOR V.	597932000200

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**EXAMINER**

BENJAMIN BUSS

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20100916

DATE MAILED:

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**Commissioner for Patents**

The information disclosure statement filed 9/3/2010 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it lacks the statement specified in 37 CFR 1.97(e) and the fee set forth in 37 CFR 1.17(p), which are required for an IDS filed after prosecution is closed, as detailed in 37 CFR 1.97(d)-(e) and MPEP §609.04(b)(III). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

The information disclosure statement filed 9/3/2010 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

The information disclosure statement filed 9/3/2010 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Applicant's arguments filed 9/3/2010 have been fully considered but they are not persuasive. Applicant argues that "pursuant to 37 CFR 1.97(f), if a bona fide attempt is made to comply with §1.98 but part of the required content is inadvertently omitted, additional time may be given to enable full compliance." Applicant further argues the "IDS filed on September 10, 2002, was filed before the mailing of a first Office Action on the merits; therefore, no fee or separate requirement is believed to be due."

Examiner disagrees. On 1/27/2010, the Office mailed the annotated IDS (originally filed 9/10/2002) indicating that the three references at issue here were not being considered, accompanied with an Office Action containing a detailed explanation of why they were not being considered. Applicant chose not to remedy the issue in the IDS filed 6/23/2010. Applicant did not address or comment on this issue in the response filed 7/27/2010. Applicant had ample time to address this issue between the notification mailed 1/27/2010 and the closing of prosecution with the Notice of Allowance mailed on 8/12/2010.

Examiner agrees that additional time **\*may\*** be given to enable full compliance when part of the required content of 37 CFR 1.98 is inadvertently omitted in a bona fide attempt. However, "may" does not mean "shall" or "must". It is clear from Form Paragraph 6.51 (found at the end of MPEP §609.05(a)) that extra time is given when an IDS fails to fully comply with the requirements of 37 CFR 1.98(b), and that amount of extra time is **ONE (1) MONTH** from the date of the notice. In contrast, Applicant's IDS failed to comply with 37 CFR 1.98(a)(2) and 37 CFR 1.98(a)(3), and Applicant is appealing for consideration of the IDS over 7 months after the date of the notice.

Examiner notes that MPEP §609.05(a) clearly sets forth that "Applicant may then file a new information disclosure statement or correct the deficiency in the previously filed IDS, but the date that the new IDS or correction is filed will be the date of the IDS for purposes of determining compliance with the requirements based on the time of filing of the IDS (37 CFR 1.97)." Therefore, the IDS filed 9/3/2010 is properly treated as having been filed after prosecution closed with the mailing of the Notice of Allowance on 8/12/2010.

For the reasons given above, the IDS filed on 9/3/2010 has **\*not\*** been considered, as is proper under 37 CFR 1.97(d)-(e) and MPEP §609.04(b)(III).

/Donald Sparks/  
Supervisory Patent Examiner, Art Unit 2129

PTO-90C (Rev.04-03)